

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
JAMES KNOLL GARDNER, DISTRICT JUDGE

APPLICATION FOR CONTINUANCE

INSTRUCTIONS:

1. Please type or print legibly.
2. Counsel of record and unrepresented parties must sign.
3. Applying counsel or unrepresented party shall (a) complete Sections I, II and III; (b) obtain a new date certain from Judge Gardner's chambers; (c) obtain agreement of all counsel and unrepresented parties to the new date; and (d) insert new agreed date and time on the "DATE/TIME" line in Section V.
4. Other counsel of record and unrepresented parties shall complete Section IV, indicating whether "UNOPPOSED" or "OPPOSED", and specifying the reasons for any opposition.
5. This form may be submitted in multiple parts.

I. APPLICATION IS MADE TO CONTINUE THE FOLLOWING CASE(S):

James McElroy, Plaintiff

CASE NO: 09-5475 (TMG)

VS

Five Star International, LLC, et al.

COMPANION CASE NO(S):

CASE SCHEDULED ON DATE March 7, 2011 TIME 9:30 a.m.

BEFORE JUDGE JAMES KNOLL GARDNER

TYPE OF PROCEEDING (CHECK BELOW)

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> ARGUMENT | <input type="checkbox"/> NON-JURY TRIAL | <input type="checkbox"/> RULE 16 OFFICE
PRE-TRIAL CONFERENCE | <input type="checkbox"/> SENTENCING |
| <input type="checkbox"/> HEARING | <input type="checkbox"/> PLEA HEARING | <input type="checkbox"/> RULE 16 TELEPHONE
STATUS CONFERENCE | <input type="checkbox"/> SETTLEMENT CONFERENCE |
| <input checked="" type="checkbox"/> JURY TRIAL | <input type="checkbox"/> RULE 16 OFFICE
STATUS CONFERENCE | <input type="checkbox"/> RULE 16 TELEPHONE
PRE-TRIAL CONFERENCE | <input type="checkbox"/> OTHER _____ |

II. NUMBER OF PREVIOUS CONTINUANCES 1 **BY PLAINTIFF** 1 **BY DEFENDANT** 0
BY THIRD PARTY PLAINTIFF _____ **BY THIRD PARTY DEFENDANT** _____

III. APPLICATION IS MADE FOR THE FOLLOWING REASON(S): See Attached.

William Dengler [Signature] 2/17/11 Five Star International and John
APPLYING PARTY: PLEASE PRINT AND SIGN 810-709-8705 DATE REPRESENTING Scheier
Telephone: _____

IV. APPLICATION IS UNOPPOSED/OPPOSED FOR THE FOLLOWING REASON(S): See Attached.
Plaintiff did not request a prior trial continuance.

Andrea C. Farney [Signature] 2/17/2011 Plaintiff, James McElroy
OPPOSING PARTY: PLEASE PRINT AND SIGN 717-299-6300 DATE REPRESENTING
Telephone: _____

OPPOSING PARTY: PLEASE PRINT AND SIGN _____ DATE _____ REPRESENTING _____
Telephone: _____

V. ACTION TAKEN BY THE COURT:

NOW, _____

- ☐ APPLICATION IS GRANTED AND THE CASE IS CONTINUED ☐ APPLICATION DENIED
☐ NO FURTHER CONTINUANCES

☒ TO 4/18/11/9:30 a.m.
DATE/TIME

JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES MCELROY, Plaintiff	:	Civil Action No. 09-5475
	:	
	:	JURY TRIAL DEMANDED
v.	:	
	:	
FIVE STAR INTERNATIONAL, LLC.,	:	
JOHN A. SCHELER,	:	
FRED P. SCHELER,	:	
AND PETER F. SCHELER	:	

DEFENDANTS' MOTION FOR EXTENSION OF DEADLINES

AND NOW COME, Defendants, Five Star International LLC. and John A. Scheler, who, by and through their undersigned counsel, hereby file the following Motion to Extend Deadlines and, in support thereof, hereby aver as follows:

1. On or about November 17, 2009, Plaintiff James McElroy commenced the instant action by filing a Complaint sounding in alleged violations of the Fair Labor Standards Act (FLSA) and for wrongful discharge under Pennsylvania law.
2. On April 15, 2010 an Order was entered by the late Honorable Thomas Golden, dismissing the wrongful discharge claim from the Complaint.
3. On May 4, 2010, Defendants filed an Answer to Plaintiff's Complaint with Affirmative Defenses.
4. Subsequently, a scheduling order was entered closing fact discovery on September 1, 2010 and setting December 1, 2010 as the deadline for filing dispositive motions and March 10, 2011 as the date for jury selection, with March 14, 2011 scheduled for the first day of trial.

5. On August 18, 2010, Plaintiff filed a Motion seeking a sixty (60) day extension of the discovery deadline.

6. Defendants concurred with Plaintiff's Motion to Extend and, on September 23, 2010, an order was entered extending discovery in this matter until November 1, 2010

7. Additionally, on September 21, 2010, following a second Rule 16 status conference in this matter, an Order was entered setting January 10, 2011 as the deadline for filing Motions in *Limine* and moving the trial date up to March 7, 2011.

8. In addition, on September 22, 2010, a Jury Trial Attachment Order was entered, which established additional deadlines, including a February 21, 2011 deadline for submission of agreed upon jury instructions.

9. Consistent with the foregoing Orders, on December 1, 2010, Defendants filed their Motion for Summary Judgment and, on January 10, 2011, a Motion in *Limine*, which are currently pending.

10. At present, Defendants' counsel, who is the only attorney in the office who practices employment law, is in trial before the Honorable Kent H. Albright in the Montgomery County Court of Common Pleas in the case of *Goon, et ux v. Mintz, et al.*, Montgomery County CCP, docket# 95-13149.

11. Despite the fact that trial commenced last Monday, February 7, 2011, jury selection did not occur until February 8, 2011 and Plaintiffs' first witness did not leave the stand until the Court recessed on Monday, February 14, 2011.

12. Given the pace of the *Goon* trial, the fact that there are five (5) separate Defendants who will litigate cross-claims, and considering that the trial is been bifurcated with

the damages portion to follow immediately after the liability determination, said trial is now expected to go into March 2011.

13. Accordingly, Defendants respectfully request that this Honorable Court extend all applicable deadlines in this matter, including the March 7, 2011 trial date, for thirty (30) days.

14. Defendants' counsel's office has spoken with counsel for the Plaintiff and they do not agree with this request.

15. With regard to the foregoing, it is respectfully submitted that counsel for Defendants did not oppose Plaintiff's Motion to Extend. In addition, counsel for Defendants has filed no prior Motions seeking extensions and hereby verifies that this request is being made in good faith and will be followed by no additional extension requests.

WHEREFORE, Moving Defendants respectfully request that this Honorable Court enter an Order extending all applicable deadlines for thirty (30) days.

HENDRZAK & LLOYD

/s/ William E. Dengler

WILLIAM E. DENGLER, ESQUIRE

Attorney for Defendants Five Star
International LLC. John A. Scheler, Fred P. Scheler,
and Peter F. Scheler

Attorney I.D. No.: 72696

3701 Corporate Center Parkway, Suite 100

Center Valley, Pennsylvania 18034

(610) 709-8705

(610) 709-8560 (fax)

Dated: 2/15/11

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

James McElroy,
Plaintiff

v.

Five Star International, LLC.,
& John A. Scheler
Defendants.

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:
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Civil Action No. 09-cv-05475

(Hon. James Knoll Gardner)

Jury Trial Demanded

**PLAINTIFF'S RESPONSE IN OPPOSITION TO:
DEFENDANTS' MOTION FOR EXTENSION OF DEADLINES**

Plaintiff McElroy, through counsel, makes this response in opposition to Defendants' Motion for Extension of Deadlines:

1. On September 21, 2010, counsel for the parties and the Court held a status conference. The Court, with the advice and consent of present counsel, scheduled this matter for trial commencing March 7, 2011. (Doc. 27).
2. On September 21, 2010, the Plaintiff reminded the Court of the outstanding motion to extend the fact discovery, arguing that the parties would adhere to all deadlines, including trial attachment dates.
3. Defendants benefited from Plaintiff's request to move the fact discovery deadline just as Plaintiff did.
4. On September 21, 2010, Defendant knew the *Goon, et us v. Mintz, et al.*, eight-day trial was set for February 7-16, 2011, but he did not raise this as a possible conflict nor did he inform this Court of his office's legal staff deficiencies.
5. On September 22, 2010, the Court issued a jury trial attachment order. (Doc. 26).

6. The parties have met all trial deadlines to date, including:
 - a. December 1, 2010 deadline for Summary Judgment Motion (Doc. 29);
 - b. December 22, 2010 deadline for Response in Opposition to Motion for Summary Judgment (Doc. 35);
 - c. January 10, 2011 deadline for Motions *in Limine* (Docs. 43-44);
 - d. January 24, 2011 deadline for Trial Memoranda (Docs. 46-47);
 - e. February 7, 2011 deadline for serving Proposed Jury Instructions;
 - f. February 14, 2011 deadline for Objections to Voir Dire, Proposed Verdict Slips, Exhibits and Qualifications of Experts (Docs. 49-51).
7. Plaintiff issued Trial Subpoenas on February 14, 2011.
8. On September 22, 2010 the Court issued an order directing counsel to use Judge Gardner's approved application for continuance, which is found on the web site for the United States District Court for the Eastern District of Pennsylvania.
<http://www.paed.uscourts.gov/documents/procedures/garpola.pdf>
9. Defendants failed to follow the Court's Order when they requested a continuance.
10. Defendant bases his request for continuance on 1) his present engagement in trial; and 2) the lack of other attorneys at Zurich Insurance who can handle employment matters.
11. Defendant does not aver that there is a lack of other attorneys at Zurich Insurance that can handle the *Goon, et us v. Mintz, et al* matter, which is a termite case.
12. On February 3, 2011, Plaintiff's counsel contacted Defendants' counsel requesting a conference call to discuss objections to exhibits and jury instructions. (See Exhibit A)

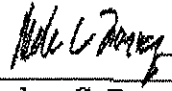
13. Defendants' counsel knew at the time of this email exchange that the *Goon* trial would likely last two weeks, yet he did not request a continuance at that time. (See Exhibit A)
14. On Sunday, February 13, 2011 Defendants' counsel informed Plaintiff's counsel that Attorney Bill Schaeffer was going to assist Defense counsel in pretrial matters. (See Exhibit B).
15. As Attorney Bill Schaeffer is able to assist with pretrial matters he should be able to assist with litigating the matter at trial.
16. Plaintiff's counsel is a two attorney firm with limited resources and multiple cases in both the Eastern District Court and the Middle District Court.
17. Continuing the trial in to a different term will prejudice Plaintiff because Plaintiff's counsel must honor its prior commitments and trial attachments, therefore, it is unlikely that a new trial date could be scheduled for many months. Such a delay clearly prejudices Plaintiff's ability to full restorative and timely relief.
18. This Court has a reputation for managing its docket efficiently and expeditiously, and in anticipation of this, Triquetra Law, Plaintiff's counsel, entered the appearance of two attorneys in this case to meet discovery and pretrial deadlines.
19. This Court has a reputation for holding only one pretrial conference and attaching counsel for trial at a specific date and time, well in advance of that date and with the expectation that counsel will honor it.
20. Because of the Court's known reputation, Triquetra Law, Plaintiff's counsel, entered the appearance of two attorneys in this case to assure the trial could be held when scheduled.

21. When Plaintiff's counsel requested the extension of fact discovery, counsel did not request an extension of any other trial deadlines so that the request would conform with the Court's expectation and direction at the September 21, 2010 Rule 16 conference.
22. Plaintiff's counsel foresaw the logical and predictable problems associated with having only one attorney entered in this case and it is reasonable to assume Zurich Insurance counsel would have foreseen the same.

Dated: 2/15/2011

 TRIQUETRA LAW ®

By:



Andrea C. Farney
Attorney for Plaintiff
PAB #204317
The Offices at Marion Court
35 E. Orange St. #301
Lancaster, PA 17602
717-299-6300
717-299-6338 Fax
Farney@triquetralaw.com

Exhibit A

Hi Bill,

We should get together next week to review exhibits and jury instructions. Could you do something on Wednesday or Thursday? Andrea

Andrea C. Farney
Appeals, Civil Rights, Employment Law

Triquetra Law®
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Visit us on the web at www.triquetralaw.com

Statement of Confidentiality

The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee and may contain confidential or privileged information. If you are not the intended recipient, please notify Triquetra Law Offices at 1 (717) 299-6300 and destroy all copies of this message and any attachments.

-----Original Message-----

From: Bill Dengler [<mailto:bill.dengler@zurichna.com>]

Sent: Thursday, February 03, 2011 6:26 PM

To: Farney@Triquetralaw.com

Cc: 'Sharon R. López'; Deborah Byrnes

Subject: Re: McElroy v. Five Star Int'l et al. 5:09-cv-5475-JKG

I start trial on Monday which may last two weeks (Plaintiff thinks- I think it should be three days)- I will have to get back to you on availability- When are the joint jury inst due

Bill

Exhibit B

-----Original Message-----

From: Bill Dengler [mailto:bill.dengler@zurichna.com]

Sent: Sunday, February 13, 2011 10:43 AM

To: Lopez@triquetralaw.com

Cc: 'Deborah Byrnes'; Farney@Triquetralaw.com; William Schaefer

Subject: RE: McElroy v. Five Star Int'l et al. 5:09-cv-5475-JKG

I am still on trial, plaintiff will not close on his case until Wed at earliest, although now bifurcated, if the case gets to the jury on liability it will not happen until Thursday at the earliest. We are scheduled to go right into damages once the jury returns. If the case goes through damages we are looking toward the end of the following week. Interesting day Friday, a juror actually told the plaintiff to just answer the question, its either yes or no- and about ten minutes later, one of the other defendant's legs fell off.

Bill Schaefer is going to try to help me out with some of this stuff, if you have questions, please get in touch with him. (610)709-8577.